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TAXATION OF REAL ESTATE CONNECTED WITH CONDUCTING ECONOMIC ACTIVITY

General Remarks

In Polish legislation, the highest burdens in the scope of real estate tax are those connected with running economic activity. For instance, a maximum rate of land tax connected with running economic activity is twice as high as the one for the land not used in such an activity. In case of buildings, this difference is even higher – a maximum rate for buildings connected with running economic activity is three times as high as for other buildings.

It is a rule that buildings and building structures of entrepreneurs are covered by real estate tax regulated in the Act of 12.01.1991 on Local Taxes and Fees¹. On the other hand, entrepreneurs' lands may be taxed by one of three taxes: from real estate tax through agricultural to forest tax. The structure of agricultural tax is regulated by the Act of 15.11.1984 on Agricultural Tax², whereas forest tax is regulated by the Act of 30.10.2002 on Forest Tax³. It should be emphasized that entrepreneurs' lands, irrespective of their nature, which are actually seized in order to run economic activity thereon, are taxed by real estate tax. Only agricultural lands and forests which do not serve such an activity may be taxed by a relatively low agricultural tax or forest tax.

First, I will present principles of real estate taxation with reference to buildings and building structures that are subject to the Act on Local Taxes and Fees.

A Statutory Definition of a Relation between Land, Building and Building Structure and Running Economic Activity

The Act on Local Taxes and Fees (Art. 1a par. 1 point 3) defines lands, buildings and building structures connected with running economic activity, which are

1 Uniform text Journal of Laws of 2006 No. 121, item 844 with subsequent changes

2 Uniform text Journal of Laws of 2006 No. 136, item 969 with subsequent changes

3 Journal of Laws No. 200, item 1682 with subsequent changes

deemed/understood as lands, buildings and building structures that are possessed by entrepreneurs or other entities running economic activity excluding housing estates/houses and lands joined with these buildings as well as lands under lakes seized for water reservoirs or water power plants unless the subject of taxation is not and cannot be used to run this activity for technical reasons.

In the light of the above definition, a very fact of possessing land, building or building structure by an entrepreneur, in principle results in their taxation according to the highest rates or taxation in general (building structures). In fact, it does not matter at all whether they are really used for economic activity. The above definition does not mention any conditions to use such type of property/real estate for purposes connected with economic activity at all. The only prerequisite is their possession by an entrepreneur.

Real Estate Owned by Entrepreneurs

As it was mentioned before, in principle, land, building or building structure are considered to be connected with running economic activity not according to their actual use but only to an objective fact of their possession by an entrepreneur. An owner is both an entity who actually takes possession of a thing as an owner (self-contained possessor/holder) and the one who actually takes its possession as a user, lien holder, tenant, lessee or enjoys another right which implies a specific possession of a third party (dependent possessor/holder). Under the Act on Local Taxes and Fees, an entity possessing a real estate on the basis of other legal titles than those comprised by the subject scope of the Civil Code is an owner as well. The very fact of taking a real estate into possession by an entrepreneur makes him/her its owner in the meaning of Art. 1a par. 1 point 3 of the Act thereof.

The meaning of the above definition arises considerable doubts with reference to entrepreneurs who are natural persons and buy real estate for purposes not connected with their economic activity at all. I mean here, e.g., a situation where such a subject purchases a recreational/leisure land. May such land be treated as the one connected with running economic activity? In the light of literal reading of the above quoted provision, it seems so, but a rational approach to its content contradicts such its interpretation. The above mentioned land has been purchased for purposes not connected with running economic activity in any way. We can also claim that this land has not been purchased by an entrepreneur at all. In case of natural persons running economic activity they can act as entrepreneurs as well as non-entrepreneurs. In practice, it is very difficult to distinguish those two kinds of activities, however, it is possible. A purchase of land by such an entity, e.g. for recreational/leisure purposes, or to build a house thereon, can not be treated as

a manifestation of an entrepreneur's activity, therefore in this situation we should not talk about real estate that is possessed by an entrepreneur. The situation is completely different when a natural person running economic activity purchases land for future investment within their activity. In this case, despite the fact that the land is currently not used to run this activity, nor it is likely to be used likewise in the nearest future, it should be burdened by the highest rates of the tax as it has been purchased within, as well as for, the objectives of a conducted activity.

It should be emphasized that taxation of real estate that is possessed by natural persons – entrepreneurs, create numerous problems in practice for the above mentioned reasons. A separation of a private sphere of activity of these entities and their actions as entrepreneurs is very difficult in many cases. Legal persons that are entrepreneurs (e.g. limited liabilities companies, joint stock companies) do not cause similar problems. In their cases, we may assume that all real estate they own/possess is purchased within the frames of their activities, therefore they are possessed by an entrepreneur and as such they should be burdened by the highest rates of real estate tax.

Real Estate of Entrepreneurs that Is Not Used to Run Economic Activity

As it has already been mentioned before, if/when buildings and lands that are covered by the provisions of the Act on Local Taxes and Fees are possessed by an entrepreneur, they are subject to the highest tax rates. Building structures are taxed only when they are possessed by entrepreneurs.

However, there are three exceptions to the above rule introduced by the legislator.

Housing estates possessed by an entrepreneur as well as the lands joined with them are taxed by the highest rates of real estate tax.

The same rules of taxation refer to the lands of entrepreneurs which are located under lakes, water reservoirs and water power plants.

What is more, we deal with a special situation when land, building or building structure are possessed by an entrepreneur but, for technical reasons, they are not and they cannot be used in their economic activity. I mean such cases when a bad condition of an object (e.g. building's construction defects/damage) prevents its safe use. Therefore, if such an object is not used, it is not burdened with the highest tax rate but a rate that is three times lower.

In case of lands that are agricultural farmland or forests, their very possession by an entrepreneur does not change the level of agricultural or forest tax. These types of lands, unless they are seized for economic activity, are taxed under the same rules as lands of the entities that do not conduct economic activity. Whereas when an entrepreneur starts to use them to conduct economic activity, he/she is obliged to pay a much higher real estate tax instead of a low agricultural or forest tax.

Conclusions

A binding/existing legal status in Poland in the scope of taxation of entrepreneurs' real estate is characterized by the following elements.

First, in the scope of lands' taxation, a determination/establishment of their category (agricultural land, forest, other) is of crucial importance. In case of agricultural lands and forests they are taxed by agricultural or forest tax respectively, according to the same rules irrespective of a tax payer unless they are seized for conducting economic activity. Therefore, in such cases tax liabilities of entrepreneurs and entities that do not conduct economic activity are the same.

Second, lands that are agricultural farmland or forests seized for economic activity are taxed by a high rate of real estate tax instead of a very low rate of agricultural or forest tax.

Third, lands and buildings taxed by real estate tax are treated as the ones connected with conducting economic activity and therefore they are burdened by the highest rate of the tax by the very fact they are possessed by an entrepreneur. In case of building structures, they are taxed only when they are connected with conducting economic activity.

Fourth, the relation between land, building, building structure and conducting economic activity is, with some exceptions, a situation when they are possessed by an entity conducting economic activity regardless of the fact whether they are actually used therein in a given moment.

Streszczenie

W Polsce z władaniem nieruchomościami wiąże się obciążenie jednym z trzech podatków: od nieruchomości, rolnym lub leśnym. Zasadą jest przy tym, iż budynki i budowle podlegają opodatkowaniu jedynie podatkiem od nieruchomości, a grunty jednym z trzech wyżej wskazanych świadczeń.

Szczególnie wysokie obciążenia wiążą się z nieruchomościami będącymi w posiadaniu podmiotów prowadzących działalność gospodarczą. Podkreślić przy tym należy, iż w przypadku gruntów rolnych czy leśnych będących w ich posiadaniu, obciążone są one stosunkowo niskim podatkiem rolnym lub leśnym. Jedynie faktyczne wykorzystywanie tych gruntów do działalności gospodarczej skutkuje ich opodatkowaniem wysokim podatkiem od nieruchomości. W przypadku innych kategorii gruntów, a także budynków i budowli, podlegają one opodatkowaniu najwyższymi stawkami podatku od nieruchomości bez względu na to, czy rzeczywiście są do działalności gospodarczej wykorzystywane. Wystarczający jest sam obiektywny fakt ich pozostawiania w posiadaniu przedsiębiorcy.